

REMARKS

Summary of the Office Action

Claims 1-25 are pending in this application. Claims 6 and 10-25 have been withdrawn from consideration as being drawn to a non-elected invention/species.

Claims 1, 2, 5 and 7-9 have been rejected as anticipated, 35 U.S.C. § 102(e), by Barbut U.S. Patent 6,146,370 ("Barbut").

Claims 1-5 and 7-9 have been rejected as anticipated, 35 U.S.C. § 102(b), by Zadno-Azizi, U.S. Patent 6,022,336 ("Zadno-Azizi").

Summary of Applicants' Response

Applicants have amended claim 1 to clarify applicants' invention and further patentably distinguish over the prior art of record. Applicants add new claims 26-30 that include the same patentably distinct features. Applicants submit that claim 1 is generic to all of the various species set forth in the application, and respectfully submits that those species, and claims 6 and 10-17 directed thereto, be rejoined in this application.

Applicant's Response to the § 102 Rejections

Claims 1, 2, 5 and 7-9 have been rejected under 35 U.S.C. §102(e) as being anticipated by Barbut. Applicants respectfully submit that Barbut does not anticipate or render obvious the amended claims.

Specifically, claim 1 has been amended to recite that the catheter is "configured for transluminal **retrograde** insertion **via the descending aorta** and an expanded position wherein the occlusive element occludes antegrade flow in a

carotid artery" while the flow control device is "configured for insertion, **separately from the catheter, via a subclavian artery and brachiocephalic trunk** so that the flow control device, when deployed, inhibits flow to vertebral and common carotid arteries..." New claims 26-30 include similar recitations. Support is provided in the specification for these recitations in FIGS. 2 and 13 and the corresponding descriptions at page 12, line 19 to page 13, line 29 and page 29, lines 10 to page 30, line 34, wherein the claimed catheter corresponds to catheter 2 (in FIG. 2) and 404 (in FIGS. 13) and the claimed flow control device corresponds to flow control device 8 (in FIG. 2) and 400 (in FIGS. 13).

Barbut provides no such teaching, nor does that reference suggest such an element. Instead, FIGS. 5-6 of Barbut are directed to catheter 5 having constrictor 20 mounted on its distal end (col. 5, line 43 to col. 6, line 33). Barbut contains no teaching or suggestion of a flow control device, **separate** from catheter 5, that may be **separately inserted via a different transluminal path** to occlude flow in the vertebral or common carotid arteries, as required by amended claim 1. Accordingly, Barbut cannot anticipate independent claims 1 and 26, and thus cannot anticipate the dependent claims either.

Claims 1, 5 and 7-9 also have been rejected as being anticipated by Zadno-Azizi. That reference does not anticipate or render obvious the amended claims for at least the same reasons as Barbut. Zadno-Azizi, like Barbut, provides absolutely no teaching or suggestion regarding the use of a flow control device **separate from the main catheter**, nor use of a flow control device which can be placed along a **different transluminal route** to limit flow from the aortic arch to the vertebral arteries or common carotid arteries.

Accordingly, applicants submit that Zadno-Azizi cannot anticipate amended claim 1 or new claim 26, and thus cannot anticipate any of the dependent claims either. Moreover, because neither reference teaches or suggests use of a separate flow control device as claimed, no possible combination of those devices (or for that matter, any of the other prior art of record) would have rendered applicants' claims obvious.

In addition, applicants submit that because claims 1 and 26 are generic to the various embodiments of flow control devices disclosed in the present application, then the additional species identified in the Office action dated October 25, 2002, likewise are patentable and should be rejoined in this application.

Conclusion

In view of the foregoing remarks, an early and favorable action is earnestly requested.

Respectfully submitted,



Nicola Pisano
Reg. No. 34,408
Attorney for Applicants

Luce, Forward,
Hamilton & Scripps, LLP
11988 El Camino Real, Suite 200
San Diego, CA 92130
Tel (858) 720-6300
Fax (858) 523-4326